

THE CROSS-EXAMINATION OF RUSSELL SAGE BY MR. JOSEPH H. CHOATE IN THE LAIDLAW-SAGE CASE

(from the Art of Cross examination by Frances Wellman)

One of the most recent cross-examinations to be made the subject of appeal to the Supreme Court General Term and the New York Court of Appeals was the cross-examination of Russell Sage by Mr. Joseph H. Choate, in the famous suit brought against the former by William R. Laidlaw. Sage was defended by the late Edwin C. James, and Mr. Choate appeared for the plaintiff, Mr. Laidlaw.

On the fourth day of December, 1891, a stranger by the name of Norcross came to Russell Sage's New York office and sent a message to him that he wanted to see him on important business, and that he had a letter of introduction from Mr. John Rockefeller. Mr. Sage left his private office, and going up to Norcross, was handed an open letter which read, "This carpet-bag I hold in my hand contains ten pounds of dynamite, and if I drop this bag on the floor it will destroy this building in ruins and kill every human being in it. I demand twelve hundred thousand dollars, or I will drop it. Will you give it? Yes or no?"

Mr. Sage read the letter, handed it back to Norcross, and suggested that he had a gentleman waiting for him in his private office, and could be through his business in a couple of minutes when he would give the matter his attention.

Norcross responded: "Then you decline my proposition? Will you give it to me? Yes or no?" Sage explained again why he would have to postpone giving it to him for two or three minutes to get rid of some one in his private office, and just at this juncture Mr. Laidlaw entered the office, saw Norcross and Sage without hearing the conversation, and waited in the anteroom until Sage should be disengaged. As he waited, Sage edged toward him and partly seating himself upon the table near Mr. Laidlaw, and without addressing him, took him by the left hand as if to shake hands with him, but with both his own hands, and drew Mr. Laidlaw almost imperceptibly around between him and Norcross. As he did so, he said to Norcross, "If you cannot trust me, how can you expect me to trust you?"

With that there was a terrible explosion. Norcross himself was blown to pieces and instantly killed. Mr. Laidlaw found himself on the floor on top of Russell Sage. He was seriously injured, and later brought suit against Mr. Sage for damages upon the ground that he had purposely made a shield of his body from the expected explosion. Mr. Sage denied that he had made a shield of Laidlaw or that he had taken him by the hand or altered his own position so as to bring Laidlaw between him and the explosion.

The case was tried four times. It was dismissed by Mr. Justice Andrews, and upon appeal the judgment was reversed. On the second trial before Mr. Justice Patterson the jury rendered a verdict of \$25,000 in favour of Mr. Laidlaw. On appeal this judgment in turn was reversed. On a third trial, also before Mr. Justice Patterson, the jury disagreed; and on the fourth trial before Mr. Justice Ingraham the jury rendered a verdict in favour of Mr. Laidlaw of \$40,000, which judgment was sustained by the General Term of the Supreme Court, but subsequently reversed by the Court of Appeals.

Exception on this appeal was taken especially to the method used in the cross-examination of Mr. Sage by Mr. Choate. Thus the cross-examination is interesting, as an instance of what the

New York Court of Appeals has decided to be an abuse of cross-examination into which, through their zeal, even eminent counsel are sometimes led, and to which I have referred in a previous chapter. It also shows to what lengths Mr. Choate was permitted to go upon the pretext of testing the witness's memory.

It was claimed by Mr. Sage's counsel upon the appeal that "the right of cross-examination was abused in this case to such an extent as to require the reversal of this monstrous judgment, which is plainly the precipitation and product of that abuse." And the Court of Appeals unanimously took this view of the matter.

The portions of the cross-examination that were especially excepted to were the rejected jurors' conversation with Mr. Sage; the defendant's lack of sympathy for the plaintiff; the article in the New York World; the defendant's omission to give warning of the impending explosion, and the defendant's wealth and the extent and character of his business.

Mr. Choate._ "I hope you are very well this morning, Mr. Sage?"

Mr. Sage._ "Yes, sir."

Mr. Choate._ "Do you remember swearing to the answer in this case?"

Mr. Sage._ "I didn't hear you, sir."

Mr. Choate._ "Which is your best ear?"

Mr. Sage._ "This."

Mr. Choate._ "Do you remember swearing to the answer in this case?"

Mr. Sage._ "I do."

Mr. Choate._ "Who prepared it for you?"

Mr. Sage._ "It was prepared by my counsel."

Mr. Choate._ "Counsel in whom you have every confidence?"

Mr. Sage._ "Yes, sir."

Mr. Choate._ "Prepared after you had given a careful statement of your case to them?"

Mr. Sage._ "Such statement as I thought necessary."

Mr. Choate._ "Did you mean to conceal anything from them?"

Mr. Sage._ "No, sir."

Mr. Choate._ "Did you read the complaint over with your counsel before you swore to the answer?"

Mr. Sage._ "I presume I did."

Mr. Choate._ "Just imagine you were down at the Stock Exchange now, and speak loud enough so that gentleman can hear you."

Mr. Sage._ "I will endeavour to."

Mr. Choate._ "Did you read your answer before you swore to it?"

Mr. Sage._ "I did, sir."

Mr. Choate._ "It was true, then, was it not?"

Mr. Sage._ "I believed it to be so."

Mr. Choate._ "I call your attention to a statement made in the answer."

(Mr. Choate here read from Mr. Sage's answer in which he swore that he was in conversation with Mr. Norcross while Mr. Laidlaw was in the office, Mr. Sage having testified differently the day before.) "Was that true?"

Mr. Sage._ "I don't know. I didn't catch it."

Mr. Choate._ "I didn't want you to catch it. I wanted you to answer it. You observe, do you not, that the answer says that the plaintiff Laidlaw was in your office while you were conversing with the stranger?"

Mr. Sage._ "I observe that, but I want to state the fact as I did yesterday."

Mr. Choate._ "Answer my question. Did you observe it?"

Mr. Sage._ "I did."

Mr. Choate._ "Put down your fist and answer my question."

Mr. Sage._ "I answered it."

Mr. Choate._ "I think we will get along as soon as you answer my questions instead of making speeches. Did you observe that your answer states that before Laidlaw was in the office, and while you were conversing with the stranger, the stranger had already handed you a note demanding money?"

Mr. Sage._ "He had done no such thing."

Mr. Choate._ "Do you observe that your answer states that?"

Mr. Sage._ "Your reading states it so, but the fact is as I have stated it."

Mr. Choate._ "Was not your answer true as you swore to it?"

Mr. Sage._ "No, sir; not on your interpretation."

Mr. Choate._ "How came you to swear to it, if it is not true?"

Mr. Sage._ "I suppose that was prepared afterward by counsel, as you prepare papers."

Mr. Choate._ "I never prepare papers. What are you talking about?"

Mr. Sage._ "You have the reputation of preparing papers."

Mr. Choate._ "Do you mean that your lawyers distorted the facts from what you stated?"

Mr. Sage._ "I suppose they prepared the papers in their usual form."

Mr. Choate._ "In the usual form? Was there ever any usual form for a case like this?"

Mr. Sage._ "Yes, sir."

Mr. Choate._ "Did you ever know of such a case before?"

Mr. Sage._ "No, sir."

(**Mr. Choate** then pursued this inquiry, in various forms, for at least one hundred questions more, and getting no satisfactory answer, he continued, "We will drop the subject and go to something else.")

Mr. Choate._ "Since Mr. Laidlaw made this claim against you, you have been very hostile against him, have you not?"

Mr. Sage._ "No, sir, not hostile."

Mr. Choate._ "Have you not called him all sorts of bad names?"

Mr. Sage._ "I said he did not tell the truth."

Mr. Choate._ "Have you denounced him as a blackmailer? When did you do that?"

Mr. Sage._ "I might have said that a man who would persevere in making a statement that there was not a word of truth in, and demanding a sum of money-I don't know what you call it. Call it what you please."

Mr. Choate._ "Did you not say that you would see Laidlaw a tramp before he would get through with this case?"

Mr. Sage._ "I have no recollection of any such thing."

Mr. Choate._ "Will you swear you didn't?"

Mr. Sage._ "I won't swear. I might."

Mr. Choate._ "What?"

Mr. Sage._ "I won't testify to what I have said."

Mr. Choate._ "I want you to say whether you will swear that you said that you would see Laidlaw a tramp before he got through."

Mr. Sage._ "I don't know."

Mr. Choate._ "Do you not know that when the last juror was excused from the jury-box, or discharged, he stated in the presence of the court and the other jurymen that after the verdict rendered by the former jury in this case against you, Mrs. Sage went to him at Tiffany's and stated that the verdict was a great outrage, and that Mr. Sage would never pay a cent?" (This question was bitterly objected to by Mr. James, but allowed by the court.)

Mr. Sage._ "I want to state right here, if you will permit--"

Mr. Choate._ "The first business is to answer this question."

Mr. Sage._ "I don't know it. I know that Mrs. Sage denied ever having said anything of the kind."

Mr. Choate._ "You think the juror told a falsehood?"

Mr. Sage._ "Mrs. Sage has no recollection of having said that."

Mr. Choate._ "Did you say to anybody that it was an outrage?"

Mr. Sage._ "I have no recollection. I think it is the greatest outrage that was ever attempted by a respectable lawyer."

Mr. Choate._ "Did you not say that you would spend \$100,000 dollars in defending this case rather than pay a cent to Laidlaw?"

Mr. Sage._ "I have great confidence in the courts of this state and the United States, and I am fighting for other people besides myself, and I propose to have this case settled by the highest courts."

Mr. Choate._ "No matter what this jury says?"

Mr. Sage._ "I have great respect for them that they will decide the case rightly. I want to know if a man can come into my office, and because a tramp drops in there and an accident happens, and an injury done, I am responsible for that?"

Mr. Choate._ "These harangues of yours take a great deal of time. I ask you whether or not you knew that Laidlaw at the time of this accident had been very badly hurt?"

Mr. Sage._ "Yes, sir; I knew he had been."

Mr. Choate._ "Do not you know he was laid up in the hospital helpless?"

Mr. Sage._ "I understand he was. Yes, sir."

Mr. Choate._ "Did it ever occur to you to see what you could do for him?"

Mr. Sage._ "Yes, sir. I sent my brother-in-law to inquire after him twice."

Mr. Choate._ "Did you visit him yourself?"

Mr. Sage._ "I did not."

Mr. Choate._ "Did you do anything to relieve his sufferings?"

Mr. Sage._ "I was not called upon to do anything of the kind."

Mr. Choate._ "I did not ask you whether you were called upon. I asked whether you did?"

Mr. Sage._ "I did not."

Mr. Choate._ "Did not you refrain from going to see him because you were afraid if you did he would make a claim upon you?"

Mr. Sage._ "No, sir."

Mr. Choate._ "Did you care whether he was going to get cured or not?"

Mr. Sage._ "It is an outrage to ask such a question."

Mr. Choate._ "Did you have a grandnephew, Chapin, at this time?"

Mr. Sage._ "Yes."

Mr. Choate._ "Was he assistant editor of the World at that time?"

Mr. Sage._ "Yes."

Mr. Choate._ "Shortly after the explosion, did he come to see you and have a chat with you?"

Mr. Sage._ "Yes."

Mr. Choate._ "Did you afterward read an article published in the New York World, headed, 'A Chat with Russell Sage,' and giving an interview with you?"

Mr. Sage._ "Yes."

Mr. Choate._ "When you read in that article: 'He looks as vigorous as at any time before the time of the assassination. His face bears almost no marks of the glass that had got into it after the explosion. It was clean shaven; in fact, Mr. Sage had arisen yesterday morning and shaved himself,' did that accord with your recollection at the time you read it?"

Mr. Sage._ "No, sir; it did not. I have stated it was a gross exaggeration."

Mr. Choate._ "When the article continued, 'The only thing that impressed one was that there was a face of an old man, hearty and robust, tenacious of life and good for many years.' Did that accord with your recollection at the time?"

Mr. Sage._ "No, sir; it was an exaggeration. I was very badly scarred all over my face."

Mr. Choate._ "When you read in that article: 'It was more surprising though, when Mr. Sage arose, and helping himself up at full length, exhibited all his accustomed power of personality. He was like a warrior after battle, a warrior who has come from the thick of the fight, covered with the dust of conflict, yet without a hurt to body or limb.' Did that accord when you read it with your then present recollection?"

Mr. Sage._ "No, sir, it did not. This is the third time you have read those articles to the jury in this case; it is like the Fourth of July oration or the Declaration of Independence."

(Mr. Choate continued and was allowed to read from this newspaper article, although his questions were constantly and urgently objected to on the part of the defence, and although Mr. Sage said that he did not read half the article "because it was an exaggerated statement from beginning to end, as most paper interviews are." Mr. Choate here went into an exhaustive examination as to the details of the accident, comparing the witness's statements at previous trials with the statements at this trial, and then continued:--

Mr. Choate._ "Everything you did after you once appreciated the danger you were in, having read the threat contained in the letter the stranger handed you, was to gain time, was it not?"

Mr. Sage._ "Yes, sir."

Mr. Choate._ "You knew at that time, did you not, that Laidlaw and Norcross were in the room? Why did you not tell them to step into your private room?"

Mr. Sage._ "I will tell you very frankly it would have been almost certain death to six or seven men. There were three other men in that room with only board partitions between. It would have infuriated the stranger, and would have made him disregard me and drop the bag."

Mr. Choate._ "Did you think of the danger that Laidlaw and Norcross were in?"

Mr. Sage._ "No more than the other clerks. We were all alike."

Mr. Choate._ "And the reason you did not tell them to go into the other room was that they would even then not be out of danger?"

Mr. Sage._ "I thought it would displease Norcross, and show that I was trying to do something to head him off."

Mr. Choate._ "And he would allow the bag to drop?"

Mr. Sage._ "Yes, sir."

Mr. Choate._ "And kill you?"

Mr. Sage._ "Kill me and kill the whole of us."

Mr. Choate._ "What is your business?"

Mr. Sage._ "My business is banker and broker."

Mr. Choate._ "Why do you call yourself a banker?"

Mr. Sage._ "Because I buy stock and discount paper and make loans."

Mr. Choate._ "You are a money lender, are you not?"

Mr. Sage._ "Sometimes I have money to loan."

Mr. Choate._ "At various rates of interest?"

Mr. Sage._ "Sometimes."

Mr. Choate._ "Varying from six to sixty per cent?"

Mr. Sage._ "Oh, no."

Mr. Choate._ "What is the other part of your business?"

Mr. Sage._ "My business is operating railroads."

Mr. Choate._ "How many railroads do you operate?"

These questions were strenuously objected to, whereupon Mr. Choate said to the court,

"I think I can show that this man has so many things in his head, that he is so full of affairs, that he is not a competent witness at any time to any transaction."

Mr. Sage._ "I am operating two."

Mr. Choate._ "Are they large railroads or horse railroads?"

Mr. Sage._ "Well, one of them is a large one."

Mr. Choate._ "You help run several banks, do you not?"

Mr. Sage._ "I am not running any banks, only a director."

Mr. Choate._ "Are you a director in two banks?"

Mr. Sage._ "Yes, sir."

Mr. Choate._ "And trust companies?"

Mr. Sage._ "Yes, sir."

Mr. Choate._ "In the Manhattan Elevated R. R.?"

Mr. Sage._ "Yes, sir."

Mr. Choate._ "In the Western Union?"

Mr. Sage._ "Yes, sir."

Mr. Choate._ "In the Missouri Pacific?"

Mr. Sage._ "Yes, sir."

Mr. Choate._ "In the Union Pacific?"

Mr. Sage._ "Yes, sir."

Mr. Choate._ "This stock ticker that stood by the desk in the adjoining room, did you keep run of it yourself?"

Mr. Sage._ "Yes, sir."

Mr. Choate._ "You take care of your own estate besides, do you not?"

Mr. Sage._ "Yes, sir."

Mr. Choate._ "That took a good deal of time?"

Mr. Sage._ "It took some time."

Mr. Choate._ "How much time did that occupy?"

Mr. Sage._ "I have my assistants, my clerks, the same as you have in your office."

Mr. Choate._ "You loan money, you manage these railroads, banks, trust companies, and the other affairs that you have mentioned. Did you not have dealings in stocks?"

Mr. Sage._ "Oh, I buy and sell securities occasionally."

Mr. Choate._ "Do you not deal in puts and calls and straddles?"

Mr. Sage._ "I have in years gone by."

Mr. Choate._ "These affairs take your whole time, do they not?"

Mr. Sage._ "No, sir; I have leisure. I do not devote all my time to business."

Mr. Choate._ "I think that is all."